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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of GINA and GARRY GRANT.	
GINA GRANT, Appellant, v. GARRY GRANT, Respondent.	G052247 (Super. Ct. No. 09D008731) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Sherri L. Honer, Judge. Reversed.

John L. Dodd & Associates and John L. Dodd for Appellant.

Law Offices of Marjorie G. Fuller and Marjorie G. Fuller for Respondent.

* * *

The question before us is what constitutes remarriage as a condition to terminate spousal support. Appellant Gina Grant (Gina)[1] cohabited with a man and his daughter. She claimed the daughter as a dependent on her tax return, referring to her as a stepchild. The court held this proved Gina was married.

Respondent Garry Grant (Garry) argues this was correct and that other evidence shows Gina should be estopped from denying she remarried. Gina contends the tax return cannot prove remarriage, that she is not estopped from denying a remarriage, and there is no other evidence she remarried.

We agree with Gina the court erred in relying on the tax return and there was no other evidence she had remarried. Therefore, we reverse the order.

FACTS AND PROCDURAL HISTORY

The parties' dissolution judgment was entered in 2010 pursuant to a Marriage Settlement Agreement. The judgment provided Garry would pay Gina $2,000 per month spousal support until Garry's or Gina's death, or Gina's remarriage. The amount was deemed "absolute," and the parties agreed no court would "have jurisdiction to modify the amount or duration . . . at any time regardless of any circumstances."

In 2014 Gina filed a motion to clarify the spousal support order, contending the payments were usually late, checks were payable to "the parasites" (capitalization omitted), and Garry had sent her abusive e-mails.

Garry responded with a motion to terminate spousal support and an order for repayment. He claimed that since at least January 2013 Gina had been married, or living with and holding herself out to be married, to Dr. Markus Lenger (Lenger). Garry claimed Gina had violated the judgment by failing to notify him of her marriage.

In his declarations filed in support of the termination motion, Garry stated that a program for a symposium at which Lenger had been a speaker he stated he was

[1] We use the parties' first names for clarity, not out of disrespect.

living "with his wife Gina and daughter." Garry declared he had found other evidence Gina was married or stated she was. She and Lenger had bought a home together. When Gina informed Garry to send her support payments to a different bank account, he learned it was a joint account in the names of Gina Grant and Lenger.

Garry also found a patent application and a trademark application for a company call CleanBlu in the names of Markus Johannes Lenger and Gina Helen Lenger. Further, Garry attached an exhibit showing a Gina Lenger on LinkedIn.

Garry also stated he had received an e-mail from Gina showing her address as "ginalenger@me.com." Garry learned Gina and Lenger had created a revocable trust in the names of Gina H. Grant and Lenger as trustees.

In her responses, Gina denied she had remarried. She and Lenger never planned or had a ceremony and did not obtain a marriage license. Gina also declared she and Lenger did not file joint tax returns since they were not married and they did not have joint insurance. The homeowners insurance and property tax documents were in the name of Gina Grant.

Gina's driver's license, social security card, medical insurance card, and California benefits card were all in the name Gina Grant. Her CalFresh application also showed Gina Grant.

Gina had filed her tax return under the name Gina Grant, showing head of household, unmarried. She claimed Lenger's daughter, Amadea, as an exemption because Amadea lived in the home and Lenger had no income.

Gina also declared Lenger prepared the patent and trademark documents and showed Gina as Gina Lenger instead of Grant out of "petty emotions" and "never to establish any marriage." She stated those documents do not show her as married.

Documents Garry lodged for trial showed the deed to the house in the names of Lenger and Gina Grant, each as unmarried. The joint bank account Gina held with Lenger also named her as Gina Grant.

At trial, Garry testified Gina had never told him she had married Lenger nor had he ever seen either of them wear a wedding ring. He had no documents showing the two were married. Although he understood what marriage meant, he thought the term was "a very ambiguous statement in this case." He interpreted it as "[t]he conscious mutual decision to co-mingle lives," not a legal definition. He testified he had been married two times and both times had obtained a license and had a ceremony.

Gina confirmed she and Lenger had lived together since 2010 and had bought a house together. They jointly owned a car and had a joint bank account. They also executed a living trust together, which owned the house.

According to her testimony, Gina and Lenger owned a business together and she is the chief financial officer. She did not prepare the patent application, Lenger did; she had never read it. Although the Gina Lenger in the application refers to her, that is not her name. As to the symposium program, she had never seen it until it was put in evidence.

Gina testified she had listed Amadea as her stepchild, because her certified public accountant (CPA) told her "it made financial sense." She had never told the CPA she was married to Lenger. She did not know how that term was defined and when counsel explained it to her, she stated Amadea would not be her stepchild because Gina and Lenger were not married. Gina admitted she had worked for a tax preparer for five weeks a year for two years but did not remember whether she had learned the definition of a dependent.

Gina testified she had never had a LinkedIn account identifying herself as Gina Lenger. Her account used the name Gina Grant. When she was shown a document listing her as Gina Lenger and referring to waste water treatment, the business which she and Lenger were involved, she stated she did not believe the document referred to her.

Gina had four e-mail addresses, one of which was ginag516@gmail.com, which she used to communicate with Garry. When questioned about a tag line on an e-

mail showing Gina Lenger, she replied that name, not Gina Grant, was what Garry would have in his address book. The other three e-mail addresses were ginagrant@cleanblu.com, ginatapabeach@gmail.com, and ginalenger@me.com. Lenger had created the last account.

A picture of Gina and Lenger in their house showed her wearing a ring on the third finger of her left hand. She testified Garry had given the ring to her. Lenger had never proposed to her and they had never obtained a marriage license from any jurisdiction anywhere in the world. She had never participated in a marriage ceremony with Lenger. She was single and had been since she was divorced from Garry. She would not be married to Lenger whether or not spousal support was paid.

After testimony was completed the court allowed further briefing on the tax return argument, stating that the return was signed under penalty of perjury and presumptively correct. Gina's showing Amadea as her stepchild would support a finding Gina and Lenger were married. The court also noted the testimony Gina had worked for a tax preparer, stating Gina seemed "to be an educated and an intelligent woman."

Gina's CPA filed a declaration stating that, based on Internal Revenue Code section 152, Gina could claim Amadea as a dependent because she was part of Gina's household. There was no requirement Gina be related to Amadea nor that Gina be married to Lenger. Due to the CPA's understanding Gina was not married to Lenger, she had Gina file as head of household, not as a married person. In an opinion letter to Gina's lawyers, attached as an exhibit, the CPA stated that "[u]pon further analysis and review," Amadea should have been shown as "other," not a "stepchild," and Gina should have been listed as "single," not "head of household."

The court granted Garry's motion to terminate support and ordered Gina to reimburse him for 21 months of support he had paid in the total amount of $42,000 plus interest. The court found Garry had proven Gina remarried, even though he did not produce a marriage certificate. The court pointed to the following evidence: 1) Gina and

Lenger cohabited since 2010; 2) they bought a home together, have joint bank accounts, and have a joint trust; 3) they applied for patents and a trademark, which Gina signed under penalty of perjury as Gina Lenger; and 4) Gina is referred to as Gina Lenger on one of her e-mail accounts and on LinkedIn.

"Most importantly," said the court, Gina claimed Amadea as her stepchild on her tax return, showing Amadea had lived with her for 12 months. She signed the return under penalty of perjury. Tax returns are presumed true. Further, Gina knew or should have known she could not claim Amadea unless she actually was her stepchild, which would require a marriage. Gina worked for a tax preparer and should have known who qualified as a dependent.

The court noted that Gina had presented evidence that explained much of the delineated evidence but did not "adequately demonstrate" she erroneously claimed Amadea as her stepchild or that she did not know a stepchild had to be the child of a spouse.

Gina moved for a new trial, stating in her declaration that she had not married anyone after her divorce from Garry, particularly Lenger. She also declared she had never agreed to marry Lenger, obtained a marriage license, had a marriage solemnized or "had anything which authenticates a marriage to anyone after [the] dissolution from [Garry]."

Since her divorce from Garry she had only been in the United States, Switzerland, England, and China and had never married in any of them. She attached copies of pages from her passport.

When Gina filed the tax return showing Amadea as her stepchild, she was not admitting she was married. Additionally, she did not learn tax law when she briefly worked for a CPA, who happened to be currently representing Garry.

Gina attached a copy of the grant deed for the home she owns with Lenger showing them as unmarried and her name as Gina Grant. She also attached a form 1099

issued to Garry for 2014 that approved his continuing benefits as a widower, that stated if he married he was no longer entitled to those benefits. Attached as well was a LinkedIn page showing her as Gina Grant. Further, she attached a statement of information filed with the California Secretary of State for CleanBlu showing Gina Grant as the secretary and chief financial officer.

Gina claims Medi-Cal benefits as a single person and was concerned she could lose them as a result of the decision. She also stated she had no intent that her earnings were community property to which Lenger might have a claim. Likewise she noted that if she separated from Lenger she would not be entitled to spousal support from him.

Lenger also filed a declaration, stating he had never married Gina. He had never agreed to marry her, obtained a marriage license anywhere, or participated in any ceremony solemnizing a marriage to her. Further, he has nothing to authenticate a marriage to Gina.

Lenger stated he had no intent that his earnings be community property. He also stated he did not earn enough to file a tax return in 2013. He and Amadea lived with Gina, who provided more than half of Amadea's support.

The court denied the motion, ruling that there had not been a trial, only a postjudgment request to terminate spousal support.

DISCUSSION

1. Standard of Review

Although an order terminating spousal support is generally reviewed for abuse of discretion (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1480), the court decided a legal question, i.e., what is legally sufficient to prove a marriage. Thus we use a de novo standard. (*In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1145.) Any factual findings we review for substantial evidence. (*In re Marriage of Hill & Dittmer* (2011) 202 Cal.App.4th 1046, 1052.)

2. Requirements for Valid Marriage

Family Code section 300, subdivision (a) (all further statutory references are to this code unless otherwise designated) defines marriage and sets out the requirements: "Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division."

Under section 4337, as a matter of law spousal support is terminated by remarriage of the supported spouse. *In re Marriage of Left, supra,* 208 Cal.App.4th at page 1145 found the word remarriage "is clear and unambiguous, and requires entry into a legal marriage."

3. No Valid Marriage

The court found Gina was married based primarily if not solely on the fact she claimed Amadea as her stepchild on a tax return. It stated Gina could not claim Amadea as a dependent unless she was actually her stepchild. One can only have a stepchild if one is married. The court ruled tax returns are presumed to be correct. This was error.

Under federal law, tax returns are not presumptively correct for all purposes. (E.g., *Mays v. United States* (11th Cir. 1985 763 F.2d 1295, 1297 [in tax refund action deficiency determination presumed correct and tax return to contrary insufficient to rebut].) Neither Garry nor the court cited nor have we found any law that states income tax returns are presumptively correct in all respects.

In California, case law has held only that gross income as reported on a tax return is presumptively correct in a child support action. (E.g., *In re Marriage of Loh* (2001) 93 Cal.App.4th 325, 332.) This rule is based on the "Legislature's goal of uniformity and expedition." (*Id.* at p. 333.) "It is a relatively easy way of identifying realistic income figures and spares 'chronically overcrowded family courts the burden of

determining income on an ad hoc basis, with the risk of inconsistent results.' [Citation.]" (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 734.) This is a narrow principle that does not apply to the entire contents of tax returns. Nor does it apply to the facts of this case, which does not deal with child support.

As Gina points out, a tax return cannot and does not evidence that the elements necessary to create a marriage have been satisfied. Further, "[t]he State . . . has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved." (*Pennoyer v. Neff* (1877) 95 U.S. 714, 734-735; see *Ensminger v. C.I.R.* (4th Cir. 1979) 610 F.2d 189 191 ["the regulation of marriage, family life and domestic affairs 'has long been regarded as a virtually exclusive province of the States'"].)

Garry concedes Gina could have claimed Amadea as a deduction because Amadea lived in Gina's household and Gina supported her.[2] He also affirmatively states the tax return itself does not prove a valid marriage.

Rather, he argues, Gina's description of Amadea as a stepchild "is probative of the fact" Gina married Lenger. He describes the statement as "a specific admission" by Gina of the marriage. We are not persuaded. That does not prove a marriage, no matter how Amadea is described. Nor do Gina's motivation and understanding matter.

A person can hold herself out to be many things. A person can call herself married. It does not mean she is. A person can claim to be divorced and act as such, but if she remarries, she is likely a bigamist, even if she mistakenly thought he was divorced.

[2] The Internal Revenue Code defines a dependent as "[a]n individual . . . who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household." (26 U.S. Code § 152(d)(2)(H).)

There are certain formalities for a valid marriage that must be met, none of which includes declaring yourself married. If those formalities are not met, there is no marriage, as here.

While admitting there are no California cases proving marriage based on a estoppel theory, Garry asserts Gina should be estopped from denying remarriage so he no longer has to pay spousal support. He contends other states have relied on estoppel to do so, but cites only a 30-year-old North Carolina case, which is not analogous.

In *Taylor v. Taylor* (N.C. 1987) 362 S.E.2d 542, the court relied on estoppel after the wife voluntarily entered into a bigamous marriage. The wife had received a marriage license and had a marriage ceremony, after which the state had issued a license and marriage certificate. The court held the wife could not deny the existence of a marriage to continue to receive alimony. (*Id*. at p. 521.) "It would be inimicable to our law and to our public policy to permit [wife] here to voluntarily . . . get a marriage license, enter into a marriage ceremony with another, and receive benefits therefrom, and then continue to obtain alimony from her first husband on the grounds that she was not married." (*Ibid*.)

That is not the case here. As noted, none of the requirements of marriage were satisfied. As much as husband does not want to pay spousal support, that is the agreement he entered into and there is no basis to terminate payment. Gina's cohabitation with Lenger and even sometime use of his last name is not proof of marriage. Estoppel cannot be used to defeat the requirements of a statute based on public policy.

Moreover, Garry did not satisfy the requirements of estoppel. To apply equitable estoppel "'(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant

of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citation.]' [Citation.]" (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

Here, at the very least, Garry has not shown any detrimental reliance. His payment of support was not the result of any conduct by Gina. He was required to pay support pursuant to the dissolution judgment. Nothing Gina said or did caused him any disadvantage. That he would have unilaterally terminated payments sooner had he discovered Gina's purported remarriage is not sufficient reliance. Since she was not, in fact, married, Garry was not entitled to withhold support.

We reject Garry's reliance on *In re Marriage of Valle* (1975) 53 Cal.App.3d 837, where, based on estoppel, the court did not allow a man to deny he was the father of his brother's children. It does not persuade us the doctrine applies to two people cohabiting as husband and wife, as he argues. Given the vast number of unmarried people who cohabitate, this would turn the definition of marriage on its ear.

Citing section 308, Garry argues California recognizes marriages from other states. That section provides "[a] marriage contracted outside this state that would be valid by laws of the jurisdiction in which the marriage was contracted is valid in this state."

Garry points to language in the statement of decision that the question was not whether Gina "had a valid marriage in California, it is whether a marriage existed at all. People can be married outside of California in different areas of the world." This is true, but Garry has not provided any evidence of a valid marriage outside of the State of California. The court relied on the totality of the circumstances, including cohabitation, purchase of a home, patent and trademark applications, and e-mail and LinkedIn accounts showing Gina Lenger. But this evidence does not prove any of the required section 300 elements. In fact, it shows very little. And the court found Gina explained the evidence except the tax return. But none of that evidence shows a marriage in another jurisdiction.

Garry speculates "Gina and [Lenger] *could have* been married anywhere." (Italics added.) He relies heavily on the principle of common law marriage, listing several states that recognize common law marriages. California abolished common law in 1895 and has "consistently refused to equate the nonmarital relationship to a lawful marriage." (*Estate of Edgett* (1980) 111 Cal.App.3d 230, 232.) And there is no evidence Gina and Lenger contracted a common law marriage in any other state.

Garry argues he has no way of knowing whether Gina and Lenger remarried and "cannot be charged with investigating every jurisdiction in the world to discover" whether they entered into a valid marriage. And, he says, he should not have the burden to do so. But as Gina rightly contends, she is not required to prove a negative. (*Erler v. Five Ponts Motors* (1967) 249 Cal.App.2d 560, 568; Evid Code, § 500 [party has burden to prove each fact essential to his claim].)

In sum, there is no proof Gina is married to Lenger. It was error to rely on the tax return, and there is no evidence either that the elements of section 300 have been met or that there was a valid marriage outside of California.

4. Motion for Reconsideration

Gina argues it was error for the court to deny her motion for reconsideration. Because we reverse on the substantive issue as discussed above, there is no need for us to consider this question.

DISPOSITION

The postjudgment order is reversed. Gina is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.